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AMENDED IN ASSEMBLY MAY 1, 2007  
AMENDED IN ASSEMBLY APRIL 25, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1748**

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**Introduced by Committee on Revenue and Taxation (Charles  
Calderon (Chair), Arambula, Eng, Feuer, and Hayashi)**

March 22, 2007

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An act to amend Sections 6405, 6478, 7204.3, 7211, 7252, 7273, 7659.7, 9304, 18533, 30182, 30187, 41030, 41031, 41032, and 60653 of, to add Sections 7269, 7657.5, 8880, 11408.5, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1, and 60210.5 to, to repeal Sections 7204.02, 7204.5, 7208, 7251.2, 7252.5, 7252.6, 7252.7, 7252.8, 7252.9, 7252.10, 7252.11, 7252.12, 7252.13, 7252.15, 7252.16, 7252.21, 7252.22, 7252.30, and 7271.05 of, and to repeal Chapter 2.67 (commencing with Section 7286.28) of, Chapter 2.8 (commencing with Section 7286.40) of, Chapter 2.90 (commencing with Section 7286.47) of, Chapter 2.95 (commencing with Section 7286.56) of, and Chapter 2.96 (commencing with Section 7286.65) of, Part 1.7 of Division 2 of, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1748, as amended, Committee on Revenue and Taxation. Taxation.

(1) The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. Existing law exempts from

the use tax the first \$400 of tangible personal property that is both purchased in a foreign country and personally hand carried into this state.

This bill would modify that use tax exemption by exempting the first \$800 of tangible personal property that is purchased outside this state and personally hand carried into this state.

(2) Under the Sales and Use Tax Law and the Motor Vehicle Fuel Tax Law, certain taxpayers whose monthly tax liabilities meet or exceed specified amounts are required to make monthly prepayments of their tax liability. Under those laws, if a taxpayer fails to make timely prepayment of the tax liability ~~then~~, a 6% penalty will apply to the amount not timely remitted. Existing law also requires that the penalty be increased to 10%, as provided, if a person's failure to make a prepayment is due to negligence or intentional disregard of that law. Existing law does provide a mechanism for a taxpayer to dispute the imposition of the negligence penalty.

This bill would provide that the 10% negligence penalty law would be assessed as a deficiency determination in order to allow taxpayers an opportunity to dispute the application of *the* negligence penalty by filing a petition for redetermination.

(3) The Bradley-Burns Uniform Local Sales and Use Tax Law and the Transactions and Use Tax Law authorize local governmental agencies to impose sales and use taxes in modified conformity to state sales and use taxes and authorize the State Board of Equalization to impose specified charges in administering those local taxes, as provided.

This bill would make clarifying changes to those provisions.

(4) The Bradley-Burns Uniform Local Sales and Use Tax Law provides that all sales and use taxes collected by the State Board of Equalization pursuant to contract with any city, city and county, redevelopment agency, or county, shall be transmitted by the board to those local entities, as specified.

This bill would repeal obsolete provisions related thereto.

(5) Existing law authorizes various local governmental entities, subject to certain limitations and approval requirements, to levy transactions and use taxes in accordance with the procedures and requirements set forth in the Transactions and Use Tax Law, and requires the local governmental entities, including districts, as defined, to contract with the State Board of Equalization to administer all transactions and use taxes, as authorized. Existing law provides that all such taxes collected by the board must be transmitted to the local governmental

entities based on the location in which the sales were made. Existing law, however, does not provide a mechanism for the board to redistribute the transactions and use tax revenues that have been misallocated to a district.

This bill would allow the board to redistribute the revenues, collected by the board pursuant to a contract with the districts, that were originally misallocated by the board, but would limit the amounts eligible for the redistribution only to those amounts that were originally distributed not earlier than 2 quarterly periods prior to the quarterly period in which the board obtains knowledge of the improper distribution.

This bill would also make clarifying changes to and would repeal obsolete provisions under the Transactions and Use Tax Law.

(6) The Use Fuel Tax Law and the Diesel Fuel Tax Law both impose a tax upon each gallon of fuel subject to tax under those laws, and provide, as specified, for the transfer of revenues derived from those taxes, after authorized refunds and other allocations for specified purposes, to the Highway Users Tax Account in the Transportation Tax Fund. The Motor Vehicle Fuel Tax Law also imposes a tax of \$0.18 per gallon of fuel and requires that a portion of the amounts collected under that law be continuously appropriated for expenditure for specified purposes.

Existing law requires the Controller to transfer revenues derived from the taxes imposed under the Use Fuel Tax Law and the Diesel Fuel Tax Law to the Highway Users Tax Account at the same time as the transfers of moneys received under the Motor Vehicle Fuel License Tax Law are made.

This bill would revise the provisions of the Use Fuel Tax Law and the Diesel Fuel Tax Law to correct obsolete references to the “Motor Vehicle Fuel License Tax Law,” which effective January 1, 2002, was renamed as the “Motor Vehicle Fuel Tax Law.”

(7) The Cigarette and Tobacco Products Tax Law requires distributors and wholesalers of cigarette and tobacco products to be licensed by the State Board of Equalization. The Cigarette and Tobacco Products Tax Law also requires a tax imposed by that law with respect to distributions of cigarettes to be paid by distributors through the use of stamps or meter register settings, and requires that these stamps or meter register settings be affixed to each package of cigarettes sold. Existing law requires distributors that elect to defer payments for stamps and meter register settings to file a report with the board regarding the distribution of cigarettes and purchases of stamps and meter register settings on or

before the 5th day of the month following *the* month during which the cigarettes or tobacco products were distributed.

This bill would instead require those distributors who elect to defer payments to file the report with the State Board of Equalization regarding the distribution of cigarettes and purchases of stamps and meter register settings on the 25th day of the *month* following the month during which the cigarettes or tobacco products were distributed.

(8) The Cigarette and Tobacco Products Tax Law, under the Cigarette Tax Law, imposes a tax on every distributor of cigarettes and tobacco products at specified rates. Consumers and users subject to the tax resulting from the use or consumption of cigarettes or tobacco products, as defined, from whom the tax has not been collected are required to file a report of the amount of cigarettes received during the preceding month with the State Board of Equalization on or before the 25th day of the month following the month during which the cigarettes were received.

This bill would instead require a consumer or user subject to the tax, from whom the tax has not been collected, to file a report of the amount of cigarettes or tobacco products received during the preceding month with the State Board of Equalization on or before the last day of the month following the end of the quarter during which the cigarettes or tobacco products were received.

(9) Existing law requires the Board of Equalization to administer various tax and fee programs, including the Motor Vehicle Fuel Tax Law, the Use Fuel Tax Law, the Private Railroad Car Tax Law, the Cigarette and Tobacco Products Tax Law, the Alcoholic Beverage Tax Law, the Timber Yield Tax Law, the Energy Resources Surcharge Law, the Emergency Telephone Users Surcharge Act, the Hazardous Substances Tax Law, the Integrated Waste Management Fee Law, the Oil Spill Response, Prevention, and Administration Fees Law, the Underground Storage Tank Maintenance Fee Law, the Fee Collection Procedures Law, and the Diesel Fuel Tax Law. Those laws provide for the imposition of interest and penalties for specified violations thereof.

This bill would provide that, under regulations prescribed by the board, a tax or fee liability under those laws that is unreported, understated, or unpaid due to certain omissions of one spouse, and the other spouse did not know of, and had no reason to know of, the understatement or nonpayment, and certain other criteria are met, then the other spouse shall be relieved of liability for the tax or fee, interest, and penalties attributable to that understatement or nonpayment, as

provided. This bill would provide that this relief shall apply retroactively. The bill would, under the Emergency Telephone Users Surcharge Act change the effective date of the surcharge rate period, as provided.

This bill would make a legislative finding and declaration relating to the public purpose served by specified provisions of the bill.

(10) Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are automatically incorporated into the local taxes.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 6405 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 6405. Notwithstanding Section 6246, the storage, use, or other
- 4 consumption in this state of the first eight hundred dollars (\$800)
- 5 of tangible personal property purchased in a foreign country by
- 6 an individual from a retailer and personally hand-carried into this
- 7 state from the foreign country within any 30-day period is exempt
- 8 from the use tax. This section shall not apply to property sent or
- 9 shipped to this state.
- 10 SEC. 2. Section 6478 of the Revenue and Taxation Code is
- 11 amended to read:
- 12 6478. (a) If a failure to make a prepayment as described in
- 13 Section 6477 is due to negligence or intentional disregard of this
- 14 part or authorized rules and regulations, the penalty shall be 10
- 15 percent instead of 6 percent.
- 16 (b) If any part of a deficiency in prepayment is due to negligence
- 17 or intentional disregard of this part or authorized rules and
- 18 regulations, a penalty of 10 percent of the deficiency shall be paid.

(c) The provisions of this section shall not apply to amounts subject to the provisions of Sections 6484, 6485, 6511, 6514, and 6591.

(d) The 10 percent negligence penalty shall become due and payable and shall be ascertained and determined in the same manner as the deficiency determination under Article 2 (commencing with Section 6481) of this chapter. The provisions of Article 5 (commencing with Section 6561) of this chapter shall be applicable with respect to the finality of the determination and the right to petition for redetermination.

SEC. 3. Section 7204.02 of the Revenue and Taxation Code is repealed.

SEC. 4. Section 7204.3 of the Revenue and Taxation Code is amended to read:

7204.3. The board shall charge a city, city and county, redevelopment agency, or county an amount for the board's services in administering the sales and use tax ordinance of the local entity, as determined by the board with the concurrence of the Department of Finance, as follows:

(a) Beginning with the 2006–07 fiscal year, the amount charged each local entity shall be based on the methodology described in Alternative 4C of the November 2004 report by the State Board of Equalization entitled “Response to the Supplemental Report of the 2004 Budget Act.”

(1) The amount charged may be adjusted in the current fiscal year to reflect the difference between the board's budgeted costs and any significant revised estimate of costs. Any adjustment shall be subject to budgetary controls included in the Budget Act. Prior to any adjustment, the Department of Finance shall notify the Chairperson of the Joint Legislative Budget Committee not later than 30 days prior to the effective date of the adjustment.

(2) The amount charged each local entity shall be adjusted to reflect the difference between the board's recovered costs and the actual costs incurred by the board during the fiscal year two years prior.

(b) The amounts determined by subdivision (a) shall be deducted in equal amounts from the quarterly allocation of taxes collected by the board for the city, city and county, redevelopment agency, or county.

1 SEC. 5. Section 7204.5 of the Revenue and Taxation Code is  
2 repealed.

3 SEC. 6. Section 7208 of the Revenue and Taxation Code is  
4 repealed.

5 SEC. 7. Section 7211 of the Revenue and Taxation Code is  
6 amended to read:

7 7211. Notwithstanding Section 7203.5, the State Board of  
8 Equalization shall continue to administer the sales and use tax  
9 ordinance of any city, county, or city and county that adopts a  
10 transactions and use tax ordinance administered by the board in  
11 accordance with Part 1.6 (commencing with Section 7251).

12 SEC. 8. Section 7251.2 of the Revenue and Taxation Code is  
13 repealed.

14 SEC. 9. Section 7252 of the Revenue and Taxation Code is  
15 amended to read:

16 7252. "District," as used in this part, means any city, county,  
17 city and county, or other governmental entity authorized, to impose  
18 transaction and use taxes pursuant to this part.

19 SEC. 10. Section 7252.5 of the Revenue and Taxation Code  
20 is repealed.

21 SEC. 11. Section 7252.6 of the Revenue and Taxation Code  
22 is repealed.

23 SEC. 12. Section 7252.7 of the Revenue and Taxation Code  
24 is repealed.

25 SEC. 13. Section 7252.8 of the Revenue and Taxation Code  
26 is repealed.

27 SEC. 14. Section 7252.9 of the Revenue and Taxation Code  
28 is repealed.

29 SEC. 15. Section 7252.10 of the Revenue and Taxation Code,  
30 as added by Section 6 of Chapter 301 of the Statutes of 1986, is  
31 repealed.

32 SEC. 16. Section 7252.10 of the Revenue and Taxation Code,  
33 as added by Section 21 of Chapter 474 of the Statutes of 2001, is  
34 repealed.

35 SEC. 17. Section 7252.11 of the Revenue and Taxation Code  
36 is repealed.

37 SEC. 18. Section 7252.12 of the Revenue and Taxation Code  
38 is repealed.

39 SEC. 19. Section 7252.13 of the Revenue and Taxation Code  
40 is repealed.

1 SEC. 20. Section 7252.15 of the Revenue and Taxation Code  
2 is repealed.

3 SEC. 21. Section 7252.16 of the Revenue and Taxation Code  
4 is repealed.

5 SEC. 22. Section 7252.21 of the Revenue and Taxation Code  
6 is repealed.

7 SEC. 23. Section 7252.22 of the Revenue and Taxation Code  
8 is repealed.

9 SEC. 24. Section 7252.30 of the Revenue and Taxation Code  
10 is repealed.

11 SEC. 25. Section 7269 is added to the Revenue and Taxation  
12 Code, to read:

13 7269. The board may redistribute tax, penalty, or interest  
14 distributed to a district other than the district entitled thereto, but  
15 such redistribution may not be made as to amounts originally  
16 distributed earlier than two quarterly periods prior to the quarterly  
17 period in which the board obtains knowledge of the improper  
18 distribution.

19 SEC. 26. Section 7271.05 of the Revenue and Taxation Code  
20 is repealed.

21 SEC. 27. Section 7273 of the Revenue and Taxation Code is  
22 amended to read:

23 7273. In addition to the amounts otherwise provided for  
24 preparatory costs, the board shall charge each district an amount  
25 for the board's services in administering the transactions and use  
26 tax determined by the board, with the concurrence of the  
27 Department of Finance, as follows:

28 (a) Beginning with the 2006–07 fiscal year, the amount charged  
29 all districts shall be based on the methodology described in  
30 Alternative 4C of the November 2004 report by the State Board  
31 of Equalization entitled "Response to the Supplemental Report of  
32 the 2004 Budget Act." The amount charged each district shall be  
33 based upon the district's proportional share of the revenue after  
34 weighting the revenue to equalize the differences in district tax  
35 rates.

36 (1) The amount charged each district may be adjusted in the  
37 current fiscal year to reflect the difference between the board's  
38 budgeted costs and any significant revised estimate of costs. Any  
39 adjustment shall be subject to budgetary controls included in the  
40 Budget Act. Prior to any adjustment, the Department of Finance



1 shall notify the Chairperson of the Joint Legislative Budget  
2 Committee not later than 30 days prior to the effective date of the  
3 adjustment.

4 (2) The amount charged each district shall be adjusted to reflect  
5 the difference between the board's recovered costs and the actual  
6 costs incurred by the board during the fiscal year two years prior.

7 (b) The board shall, by June 1 of each year, notify districts of  
8 the amount that it anticipates will be assessed for the next fiscal  
9 year. The districts shall be notified of the actual amounts that will  
10 be assessed within 30 days after enactment of the Budget Act for  
11 that fiscal year.

12 (c) The amount charged a district that becomes operative during  
13 the fiscal year shall be estimated for that fiscal year based on  
14 weighted revenue.

15 (d) The amounts determined by subdivision (a) shall be deducted  
16 in equal amounts from the quarterly allocation of taxes collected  
17 by the board for a given district.

18 SEC. 28. Chapter 2.67 (commencing with Section 7286.28) of  
19 Part 1.7 of Division 2 of the Revenue and Taxation Code is  
20 repealed.

21 SEC. 29. Chapter 2.8 (commencing with Section 7286.40) of  
22 Part 1.7 of Division 2 of the Revenue and Taxation Code is  
23 repealed.

24 SEC. 30. Chapter 2.90 (commencing with Section 7286.47) of  
25 Part 1.7 of Division 2 of the Revenue and Taxation Code is  
26 repealed.

27 SEC. 31. Chapter 2.95 (commencing with Section 7286.56) of  
28 Part 1.7 of Division 2 of the Revenue and Taxation Code is  
29 repealed.

30 SEC. 32. Chapter 2.96 (commencing with Section 7286.65) of  
31 Part 1.7 of Division 2 of the Revenue and Taxation Code is  
32 repealed.

33 SEC. 33. Section 7657.5 is added to the Revenue and Taxation  
34 Code, to read:

35 7657.5. (a) Under regulations prescribed by the board, if:

36 (1) A tax liability under this part was understated by a failure  
37 to file a return required to be filed under this part, by the omission  
38 of an amount properly includable therein, or by erroneous  
39 deductions or credits claimed on a return, and the understatement  
40 of tax liability is attributable to one spouse; or any amount of the

1 tax reported on a return was unpaid and the nonpayment of the  
2 reported tax liability is attributable to one spouse.

3 (2) The other spouse establishes that he or she did not know of,  
4 and had no reason to know of, that understatement or nonpayment.

5 (3) Taking into account whether or not the other spouse  
6 significantly benefited directly or indirectly from the  
7 understatement or the nonpayment and taking into account all other  
8 facts and circumstances, it is inequitable to hold the other spouse  
9 liable for the deficiency in tax attributable to that understatement  
10 or nonpayment, then the other spouse shall be relieved of liability  
11 for tax (including interest, penalties, and other amounts) to the  
12 extent that the liability is attributable to that understatement or  
13 nonpayment of tax.

14 (b) For purposes of this section, the determination of the spouse  
15 to whom items of understatement or nonpayment are attributable  
16 shall be made without regard to community property laws.

17 (c) This section shall apply to all calendar months subject to the  
18 provisions of this part, but shall not apply to any calendar month  
19 that is more than five years from the final date on the board-issued  
20 determination, five years from the return due date for nonpayment  
21 on a return, or one year from the first contact with the spouse  
22 making a claim under this section; or that has been closed by res  
23 judicata, whichever is later.

24 (d) For purposes of paragraph (2) of subdivision (a), “reason to  
25 know” means whether or not a reasonably prudent person would  
26 have had reason to know of the understatement or nonpayment.

27 (e) For purposes of this section, with respect to a failure to file  
28 a return or an omission of an item from the return, “attributable to  
29 one spouse” may be determined by whether a spouse rendered  
30 substantial service as a supplier entering, removing, or selling  
31 taxable motor vehicle fuel or an aircraft jet fuel dealer selling or  
32 using taxable aircraft jet fuel to which the understatement is  
33 attributable. If neither spouse rendered substantial services as a  
34 supplier or aircraft jet fuel dealer, then the attribution of applicable  
35 items of understatement shall be treated as community property.  
36 An erroneous deduction or credit shall be attributable to the spouse  
37 who caused that deduction or credit to be entered on the return.

38 (f) Under procedures prescribed by the board, if, taking into  
39 account all the facts and circumstances, it is inequitable to hold  
40 the other spouse liable for any unpaid tax or any deficiency (or

1 any portion of either) attributable to any item for which relief is  
2 not available under subdivision (a), the board may relieve the other  
3 spouse of that liability.

4 (g) For purposes of this section, registered domestic partners,  
5 as defined in Section 297 of the Family Code, have the same rights,  
6 protections, and benefits as provided by this section, and are subject  
7 to the same responsibilities, obligations, and duties as imposed by  
8 this section, as are granted to and imposed upon spouses.

9 (h) The relief provided by this section shall apply retroactively  
10 to liabilities arising prior to the effective date of this section.

11 SEC. 34. Section 7659.7 of the Revenue and Taxation Code  
12 is amended to read:

13 7659.7. (a) If the failure to make a prepayment as described  
14 in Section 7659.6 is due to negligence or intentional disregard of  
15 this part or authorized rules and regulations, the penalty shall be  
16 10 percent, instead of 6 percent.

17 (b) If any part of a deficiency in prepayment is due to negligence  
18 or intentional disregard of this part or authorized rules and  
19 regulations, a penalty of 10 percent of the deficiency shall be paid.

20 (c) The provisions of this section shall not apply to amounts  
21 subject to the provisions of Sections 7655, 7660, 7662, 7672, 7673,  
22 and 7726.

23 (d) The 10-percent negligence penalty shall become due and  
24 payable and shall be ascertained and determined in the same  
25 manner as the deficiency determination under Article 4  
26 (commencing with Section 7670) of this chapter. The provisions  
27 of Article 6 (commencing with Section 7710) of this chapter shall  
28 be applicable with respect to the finality of the determination and  
29 the right of the supplier to petition for redetermination.

30 SEC. 35. Section 8880 is added to the Revenue and Taxation  
31 Code, to read:

32 8880. (a) Under regulations prescribed by the board, if:

33 (1) A tax liability under this part was understated by a failure  
34 to file a return required to be filed under this part, by the omission  
35 of an amount properly includable therein, or by erroneous  
36 deductions or credits claimed on a return, and the understatement  
37 of tax liability is attributable to one spouse; or any amount of the  
38 tax reported on a return was unpaid and the nonpayment of the  
39 reported tax liability is attributable to one spouse.

1 (2) The other spouse establishes that he or she did not know of,  
2 and had no reason to know of, that understatement or nonpayment.

3 (3) Taking into account whether or not the other spouse  
4 significantly benefited directly or indirectly from the  
5 understatement or the nonpayment and taking into account all other  
6 facts and circumstances, it is inequitable to hold the other spouse  
7 liable for the deficiency in tax attributable to that understatement  
8 or nonpayment, then the other spouse shall be relieved of liability  
9 for tax (including interest, penalties, and other amounts) to the  
10 extent that the liability is attributable to that understatement or  
11 nonpayment of tax.

12 (b) For purposes of this section, the determination of the spouse  
13 to whom items of understatement or nonpayment are attributable  
14 shall be made without regard to community property laws.

15 (c) This section shall apply to all calendar quarters subject to  
16 the provisions of this part, but shall not apply to any calendar  
17 quarter that is more than five years from the final date on the  
18 board-issued determination, five years from the return due date  
19 for nonpayment on a return, or one year from the first contact with  
20 the spouse making a claim under this section; or that has been  
21 closed by res judicata, whichever is later.

22 (d) For purposes of paragraph (2) of subdivision (a), “reason to  
23 know” means whether or not a reasonably prudent person would  
24 have had reason to know of the understatement or nonpayment.

25 (e) For purposes of this section, with respect to a failure to file  
26 a return or an omission of an item from the return, “attributable to  
27 one spouse” may be determined by whether a spouse rendered  
28 substantial service as a user using taxable fuel or a vendor selling  
29 taxable fuel to which the understatement is attributable. If neither  
30 spouse rendered substantial services as a user or a vendor, then  
31 the attribution of applicable items of understatement shall be treated  
32 as community property. An erroneous deduction or credit shall be  
33 attributable to the spouse who caused that deduction or credit to  
34 be entered on the return.

35 (f) Under procedures prescribed by the board, if, taking into  
36 account all the facts and circumstances, it is inequitable to hold  
37 the other spouse liable for any unpaid tax or any deficiency (or  
38 any portion of either) attributable to any item for which relief is  
39 not available under subdivision (a), the board may relieve the other  
40 spouse of that liability.

1 (g) For purposes of this section, registered domestic partners,  
2 as defined in Section 297 of the Family Code, have the same rights,  
3 protections, and benefits as provided by this section, and are subject  
4 to the same responsibilities, obligations, and duties as imposed by  
5 this section, as are granted to and imposed upon spouses.

6 (h) The relief provided by this section shall apply retroactively  
7 to liabilities arising prior to the effective date of this section.

8 SEC. 36. Section 9304 of the Revenue and Taxation Code is  
9 amended to read:

10 9304. The Controller shall make the transfers at the same time  
11 as the transfers to the Highway Users Tax Account in the  
12 Transportation Tax Fund of moneys received under the Motor  
13 Vehicle Fuel Tax Law are made.

14 SEC. 37. Section 11408.5 is added to the Revenue and Taxation  
15 Code, to read:

16 11408.5. (a) Under regulations prescribed by the board, if:

17 (1) A tax liability under this part was understated by a failure  
18 to pay a tax levied and required to be paid under this part, by the  
19 omission of an amount properly includable therein, or by erroneous  
20 deductions or credits claimed, and the understatement of tax  
21 liability is attributable to one spouse; or any amount of the tax was  
22 unpaid and the nonpayment of the tax liability is attributable to  
23 one spouse.

24 (2) The other spouse establishes that he or she did not know of,  
25 and had no reason to know of, that understatement or nonpayment.

26 (3) Taking into account whether or not the other spouse  
27 significantly benefited directly or indirectly from the  
28 understatement or the nonpayment and taking into account all other  
29 facts and circumstances, it is inequitable to hold the other spouse  
30 liable for the deficiency in tax attributable to that understatement  
31 or nonpayment, then the other spouse shall be relieved of liability  
32 for tax (including interest, penalties, and other amounts) to the  
33 extent that the liability is attributable to that understatement or  
34 nonpayment of tax.

35 (b) For purposes of this section, the determination of the spouse  
36 to whom items of understatement or nonpayment are attributable  
37 shall be made without regard to community property laws.

38 (c) This section shall apply to all calendar years subject to the  
39 provisions of this part, but shall not apply to any calendar year that  
40 is more than five years from the final date on the board-issued

1 determination, five years from the return due date for nonpayment  
2 on a return, or one year from the first contact with the spouse  
3 making a claim under this section; or that has been closed by res  
4 judicata, whichever is later.

5 (d) For purposes of paragraph (2) of subdivision (a), “reason to  
6 know” means whether or not a reasonably prudent person would  
7 have had reason to know of the understatement or nonpayment.

8 (e) For purposes of this section, with respect to a failure to pay  
9 a levy or an omission of an item from the payment, “attributable  
10 to one spouse” may be determined by whether a spouse rendered  
11 substantial service as a person that owns a private railroad car  
12 operated upon the railroads in this state to which the understatement  
13 is attributable. If neither spouse rendered substantial services as  
14 such a person, then the attribution of applicable items of  
15 understatement shall be treated as community property.

16 (f) Under procedures prescribed by the board, if, taking into  
17 account all the facts and circumstances, it is inequitable to hold  
18 the other spouse liable for any unpaid tax or any deficiency (or  
19 any portion of either) attributable to any item for which relief is  
20 not available under subdivision (a), the board may relieve the other  
21 spouse of that liability.

22 (g) For purposes of this section, registered domestic partners,  
23 as defined in Section 297 of the Family Code, have the same rights,  
24 protections, and benefits as provided by this section, and are subject  
25 to the same responsibilities, obligations, and duties as imposed by  
26 this section, as are granted to and imposed upon spouses.

27 (h) The relief provided by this section shall apply retroactively  
28 to liabilities arising prior to the effective date of this section.

29 SEC. 38. Section 18533 of the Revenue and Taxation Code,  
30 as amended by Section 2 of Chapter 353 of the Statutes of 2004,  
31 is amended to read:

32 18533. (a) (1) Notwithstanding subdivision (a) and the first  
33 sentence of subdivision (b) of Section 19006:

34 (A) An individual who has made a joint return may elect to seek  
35 relief under the procedures prescribed under subdivision (b), and

36 (B) If the individual is eligible to elect the application of  
37 subdivision (c), the individual may, in addition to any election  
38 under subparagraph (A), elect to limit the individual’s liability for  
39 any deficiency with respect to the joint return in the manner  
40 prescribed under subdivision (c).

1 (2) Any determination under this section shall be made without  
2 regard to community property laws.

3 (b) (1) Under procedures prescribed by the Franchise Tax  
4 Board, if—

5 (A) A joint return has been made under this chapter for a taxable  
6 year,

7 (B) On that return there is an understatement of tax attributable  
8 to erroneous items of one individual filing the joint return,

9 (C) The other individual filing the joint return establishes that  
10 in signing the return he or she did not know of, and had no reason  
11 to know of, that understatement,

12 (D) Taking into account all facts and circumstances, it is  
13 inequitable to hold the other individual liable for the deficiency in  
14 tax for that taxable year attributable to that understatement, and

15 (E) The other individual elects (in the form and manner as the  
16 Franchise Tax Board may prescribe) the benefits of this subdivision  
17 not later than the date that is two years after the date the Franchise  
18 Tax Board has begun collection activities with respect to the  
19 individual making the election, then the other individual shall be  
20 relieved of liability for tax (including interest, penalties, and other  
21 amounts) for that taxable year to the extent that the liability is  
22 attributable to that understatement.

23 (2) If an individual who, but for subparagraph (C) of paragraph  
24 (1), would be relieved of liability under paragraph (1), establishes  
25 that in signing the return the individual did not know, and had no  
26 reason to know, the extent of the understatement, then the  
27 individual shall be relieved of liability for tax (including interest,  
28 penalties, and other amounts) for that taxable year to the extent  
29 that the liability is attributable to the portion of the understatement  
30 of which that individual did not know and had no reason to know.

31 (3) For purposes of this subdivision, the term “understatement”  
32 has the meaning given to that term by Section 6662(d)(2)(A) of  
33 the Internal Revenue Code.

34 (c) (1) Except as provided in this subdivision, if an individual  
35 who has made a joint return for any taxable year elects the  
36 application of this subdivision, the individual’s liability for any  
37 deficiency that is assessed with respect to the return may not exceed  
38 the portion of the deficiency properly allocable to the individual  
39 under subdivision (d).

(2) Except as provided in clause (ii) of subparagraph (A) of paragraph (3) or subparagraph (C) of paragraph (3), each individual who elects the application of this subdivision shall have the burden of proof with respect to establishing the portion of any deficiency allocable to that individual.

(3) (A) (i) An individual shall only be eligible to elect the application of this subdivision if—

(I) At the time the election is filed, that individual is no longer married to, or is legally separated from, the individual with whom that individual filed the joint return to which the election relates, or

(II) That individual was not a member of the same household as the individual with whom the joint return was filed at any time during the 12-month period ending on the date the election is filed.

(ii) If the Franchise Tax Board demonstrates that assets were transferred between individuals filing a joint return as part of a fraudulent scheme by those individuals, an election under this subdivision by either individual shall be invalid (and subdivision (a) and the first sentence of subdivision (b) of Section 19006 shall apply to the joint return).

(B) An election under this subdivision for any taxable year shall be made not later than two years after the date on which the Franchise Tax Board has begun collection activities with respect to the individual making the election.

(C) If the Franchise Tax Board demonstrates that an individual making an election under this subdivision had actual knowledge, at the time the individual signed the return, of any item giving rise to a deficiency (or portion thereof) that is not allocable to the individual under subdivision (d), that election may not apply to that deficiency (or portion). This subparagraph does not apply where the individual with actual knowledge establishes that the individual signed the return under duress.

(4) (A) Notwithstanding any other provision of this subdivision, the portion of the deficiency for which the individual electing the application of this subdivision is liable (without regard to this paragraph) shall be increased by the value of any disqualified asset transferred to the individual.

(B) For purposes of this paragraph—

(i) The term “disqualified asset” means any property or right to property transferred to an individual making the election under



1 this subdivision with respect to a joint return by the other individual  
2 filing the joint return if the principal purpose of the transfer was  
3 the avoidance of tax or payment of tax.

4 (ii) (I) For purposes of clause (i), except as provided in  
5 subclause (II), any transfer that is made after the date that is one  
6 year before the date on which the first notice of proposed  
7 assessment under Article 3 (commencing with Section 19031) of  
8 Chapter 4 is sent shall be presumed to have as its principal purpose  
9 the avoidance of tax or payment of tax.

10 (II) Subclause (I) does not apply to any transfer pursuant to a  
11 decree of divorce or separate maintenance or a written instrument  
12 incident to that decree or to any transfer that an individual  
13 establishes did not have as its principal purpose the avoidance of  
14 tax or payment of tax.

15 (d) For ~~purpose~~ *purposes* of subdivision (c)—

16 (1) The portion of any deficiency on a joint return allocated to  
17 an individual shall be the amount that bears the same ratio to the  
18 deficiency as the net amount of items taken into account in  
19 computing the deficiency and allocable to the individual under  
20 paragraph (3) bears to the net amount of all items taken into  
21 account in computing the deficiency.

22 (2) If a deficiency (or portion thereof) is attributable to—

23 (A) The disallowance of a credit, or

24 (B) Any tax (other than tax imposed by Section 17041 or 17062)  
25 required to be included with the joint return, and the item is  
26 allocated to one individual under paragraph (3), that deficiency  
27 (or portion) shall be allocated to that individual. Any item so  
28 allocated may not be taken into account under paragraph (1).

29 (3) For purposes of this subdivision—

30 (A) Except as provided in paragraphs (4) and (5), any item  
31 giving rise to a deficiency on a joint return shall be allocated to  
32 individuals filing the return in the same manner as it would have  
33 been allocated if the individuals had filed separate returns for the  
34 taxable year.

35 (B) Under rules prescribed by the Franchise Tax Board, an item  
36 otherwise allocable to an individual under subparagraph (A) shall  
37 be allocated to the other individual filing the joint return to the  
38 extent the item gave rise to a tax benefit on the joint return to the  
39 other individual.

1 (C) The Franchise Tax Board may provide for an allocation of  
2 any item in a manner not prescribed by subparagraph (A) if the  
3 Franchise Tax Board establishes that the allocation is appropriate  
4 due to fraud of one or both individuals.

5 (4) If an item of deduction or credit is disallowed in its entirety  
6 solely because a separate return is filed, the disallowance shall be  
7 disregarded and the item shall be computed as if a joint return had  
8 been filed and then allocated between the spouses appropriately.

9 (5) If the liability of a child of a taxpayer is included on a joint  
10 return, that liability shall be disregarded in computing the separate  
11 liability of either spouse and that liability shall be allocated  
12 appropriately between the spouses.

13 (e) (1) In the case of an individual who elects to have  
14 subdivision (b) or (c) apply—

15 (A) (i) The determination of the Franchise Tax Board as to  
16 whether the liability is to be revised as to one individual filing the  
17 joint return shall be made not less than 30 days after notification  
18 of the other individual filing the joint return.

19 (ii) Any action taken under this section shall be treated as though  
20 it were action on a protest taken under Section 19044 and shall  
21 become final upon the expiration of 30 days from the date that  
22 notice of the action is mailed to both individuals filing the joint  
23 return, unless, within that 30-day period, the individual making  
24 the election under subdivision (b) or (c) appeals the determination  
25 to the board as provided in clause (iii) or the other individual filing  
26 the joint return appeals the determination to the board as provided  
27 in Section 19045.

28 (iii) The individual making the election under subdivision (b)  
29 or (c) may appeal the determination of the Franchise Tax Board  
30 of the appropriate relief available to the individual under this  
31 section if that appeal is filed during the 30-day period prescribed  
32 in clause (ii) and the appeal shall be treated as an appeal to the  
33 board under Section 19045. Notwithstanding the preceding  
34 sentence, the individual making the election under subdivision (b)  
35 or (c) may appeal to the board at any time after the date that is six  
36 months after the date the election is filed with the Franchise Tax  
37 Board and before the close of the 30-day period prescribed in  
38 clause (ii).

39 (B) Except as otherwise provided in Section 19081 or 19082,  
40 no levy or proceeding in court shall be made, begun, or prosecuted

1 against the individual making an election under subdivision (b) or  
2 (c) for collection of any assessment to which the election relates  
3 until the expiration of the 30-day period described in clause (ii) of  
4 subparagraph (A), or, if an appeal to the board has been filed under  
5 clause (iii) or Section 19045, until the decision of the board has  
6 become final.

7 (2) The running of the period of limitations in Section 19371  
8 on the collection of the assessment to which the petition under  
9 subparagraph (A) of paragraph (1) relates shall be suspended for  
10 the period during which the Franchise Tax Board is prohibited by  
11 subparagraph (B) of paragraph (1) from collecting by levy or a  
12 proceeding in court and for 60 days thereafter.

13 (3) (A) Except as provided in subparagraph (B), notwithstanding  
14 any other law or rule of law (other than Section 19306 and Article  
15 6 (commencing with Section 19441) of Chapter 6), a credit or  
16 refund shall be allowed or made to the extent attributable to the  
17 application of this section.

18 (B) In the case of any election under subdivision (b) or (c), if a  
19 decision of the board in any prior proceeding for the same taxable  
20 year has become final, that decision shall be conclusive except  
21 with respect to the qualification of the individual for relief that  
22 was not an issue in that proceeding. The exception contained in  
23 the preceding sentence does not apply if the board determines that  
24 the individual participated meaningfully in the prior proceeding.

25 (C) No credit or refund shall be allowed as a result of an election  
26 under subdivision (c).

27 (f) Under procedures prescribed by the Franchise Tax Board,  
28 if taking into account all the facts and circumstances, it is  
29 inequitable to hold the individual liable for any unpaid tax or any  
30 deficiency (or any portion of either), and relief is not available to  
31 the individual under subdivision (b) or (c), the Franchise Tax Board  
32 may relieve the individual of that liability.

33 (g) (1) The Franchise Tax Board may prescribe regulations  
34 providing methods for allocation of items other than the methods  
35 under paragraph (3) of subdivision (d).

36 (2) It is the intent of the Legislature that, in construing this  
37 section and any other sections that are specifically cross-referenced  
38 in this section, any regulations that may be promulgated by the  
39 Secretary of the Treasury under Section 6015 of the Internal  
40 Revenue Code, as amended by Public Law 105-206, shall apply

1 to the extent that those regulations do not conflict with this section  
2 or with any regulations that may be promulgated by the Franchise  
3 Tax Board.

4 (h) (1) Except as provided in paragraph (2), the amendments  
5 made by Section 5 of Chapter 931 of the Statutes of 1999, shall  
6 apply to any liability for tax arising after October 10, 1999, and  
7 any liability for tax arising on or before that date but remaining  
8 unpaid as of that date.

9 (2) The period specified under subparagraph (E) of paragraph  
10 (1) of subdivision (b) or subparagraph (B) of paragraph (3) of  
11 subdivision (c) does not expire before the date that is four years  
12 after the date of the first collection activity after October 10, 1999.

13 (i) (1) An individual who has made a joint return and has been  
14 granted relief under Section 6015 of the Internal Revenue Code,  
15 relating to joint and several liability with respect to a federal joint  
16 income tax return, shall be eligible for relief under this section if  
17 all of the following conditions are satisfied:

18 (A) The individual requests relief under this section.

19 (B) The facts and circumstances that apply to the understatement  
20 and liabilities for which the relief is requested are the same facts  
21 and circumstances that applied to the understatement and liabilities  
22 for which that individual was granted relief under Section 6015  
23 of the Internal Revenue Code.

24 (C) The individual requesting relief under this subdivision  
25 furnishes the Franchise Tax Board with a copy of the federal  
26 determination granting that individual relief under Section 6015  
27 of the Internal Revenue Code. If the federal determination does  
28 not clearly identify the issues and liabilities for which the individual  
29 was granted relief under Section 6015 of the Internal Revenue  
30 Code, the Franchise Tax Board may request, from the individual  
31 requesting relief, any supporting documentation reasonably  
32 necessary to substantiate that the issues and liabilities for which  
33 relief is requested under this section are the same as the issues and  
34 liabilities for which the individual received relief under Section  
35 6015 of the Internal Revenue Code.

36 (2) This subdivision does not apply if, prior to the expiration of  
37 the 30-day period described in clause (i) of subparagraph (A) of  
38 paragraph (1) of subdivision (e), the other individual that filed the  
39 joint return for which the relief is requested under this subdivision  
40 submits information to the Franchise Tax Board that indicates that

1 relief should not be granted. For purposes of this paragraph,  
2 “information that indicates that relief should not be granted” is  
3 limited to the following:

4 (A) Information that indicates that the facts and circumstances  
5 that apply to the understatement and liabilities for which the relief  
6 is requested are not the same facts and circumstances that applied  
7 to the understatement and liabilities for which that individual was  
8 granted relief under Section 6015 of the Internal Revenue Code.

9 (B) Information that indicates that there has not been a federal  
10 determination granting relief under Section 6015 of the Internal  
11 Revenue Code or that the federal determination granting relief  
12 under Section 6015 of the Internal Revenue Code has been  
13 modified, altered, withdrawn, canceled, or rescinded.

14 (C) Information indicating that the other individual, as described  
15 in the first sentence of this paragraph, did not have the opportunity  
16 to participate, within the meaning of Section 6015 of the Internal  
17 Revenue Code and the regulations thereunder, in the federal  
18 administrative or judicial proceeding that resulted in relief under  
19 Section 6015 of the Internal Revenue Code.

20 (j) If, prior to the date the Franchise Tax Board issues its  
21 determination with respect to a request for relief under this section,  
22 the individual requesting relief demonstrates to the Franchise Tax  
23 Board that a request for relief has been filed with the Internal  
24 Revenue Service pursuant to Section 6015 of the Internal Revenue  
25 Code and demonstrates that the request for relief involves the same  
26 facts and circumstances as the request for relief that is pending  
27 before the Franchise Tax Board, the Franchise Tax Board may not  
28 deny relief with respect to that request, in whole or in part, until  
29 federal action on the request for relief under Section 6015 of the  
30 Internal Revenue Code is final.

31 (k) The provisions of subdivisions (i) and (j) shall apply to both  
32 of the following:

33 (1) Any tax liability that becomes final on or after the effective  
34 date of the act adding subdivisions (i) and (j) to this section.

35 (2) Any unpaid tax liability that became final prior to the  
36 effective date of the act adding subdivisions (i) and (j) to this  
37 section.

38 (l) An individual may not be granted relief under this section if  
39 a court has revised the tax liability in a proceeding for dissolution

1 of the marriage in accordance with subdivision (b) of Section  
2 19006.

3 (m) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
4 Division 3 of Title 2 of the Government Code shall not apply to  
5 any procedure or rule prescribed by the Franchise Tax Board  
6 pursuant to this section.

7 (n) This section shall cease to be operative on January 1, 2009,  
8 and as of that date is repealed.

9 SEC. 39. Section 18533 of the Revenue and Taxation Code,  
10 as amended by Section 3 of Chapter 353 of the Statutes of 2004,  
11 is amended to read:

12 18533. (a) (1) Notwithstanding subdivision (a) and the first  
13 sentence of subdivision (b) of Section 19006:

14 (A) An individual who has made a joint return may elect to seek  
15 relief under the procedures prescribed under subdivision (b), and

16 (B) If the individual is eligible to elect the application of  
17 subdivision (c), the individual may, in addition to any election  
18 under subparagraph (A), elect to limit the individual's liability for  
19 any deficiency with respect to the joint return in the manner  
20 prescribed under subdivision (c).

21 (2) Any determination under this section shall be made without  
22 regard to community property laws.

23 (b) (1) Under procedures prescribed by the Franchise Tax  
24 Board, if—

25 (A) A joint return has been made under this chapter for a  
26 taxable year,

27 (B) On that return there is an understatement of tax attributable  
28 to erroneous items of one individual filing the joint return,

29 (C) The other individual filing the joint return establishes that  
30 in signing the return he or she did not know of, and had no reason  
31 to know of, that understatement,

32 (D) Taking into account all facts and circumstances, it is  
33 inequitable to hold the other individual liable for the deficiency in  
34 tax for that taxable year attributable to that understatement, and

35 (E) The other individual elects (in the form and manner as the  
36 Franchise Tax Board may prescribe) the benefits of this subdivision  
37 not later than the date that is two years after the date the Franchise  
38 Tax Board has begun collection activities with respect to the  
39 individual making the election, then the other individual shall be  
40 relieved of liability for tax (including interest, penalties, and other

1 amounts) for that taxable year to the extent that the liability is  
2 attributable to that understatement.

3 (2) If an individual who, but for subparagraph (C) of paragraph  
4 (1), would be relieved of liability under paragraph (1), establishes  
5 that in signing the return the individual did not know, and had no  
6 reason to know, the extent of the understatement, then the  
7 individual shall be relieved of liability for tax (including interest,  
8 penalties, and other amounts) for that taxable year to the extent  
9 that the liability is attributable to the portion of the understatement  
10 of which that individual did not know and had no reason to know.

11 (3) For purposes of this subdivision, the term “understatement”  
12 has the meaning given to that term by Section 6662(d)(2)(A) of  
13 the Internal Revenue Code.

14 (c) (1) Except as provided in this subdivision, if an individual  
15 who has made a joint return for any taxable year elects the  
16 application of this subdivision, the individual’s liability for any  
17 deficiency that is assessed with respect to the return may not exceed  
18 the portion of the deficiency properly allocable to the individual  
19 under subdivision (d).

20 (2) Except as provided in clause (ii) of subparagraph (A) of  
21 paragraph (3) or subparagraph (C) of paragraph (3), each individual  
22 who elects the application of this subdivision shall have the burden  
23 of proof with respect to establishing the portion of any deficiency  
24 allocable to that individual.

25 (3) (A) (i) An individual shall only be eligible to elect the  
26 application of this subdivision if—

27 (I) At the time the election is filed, that individual is no longer  
28 married to, or is legally separated from, the individual with whom  
29 that individual filed the joint return to which the election relates,  
30 or

31 (II) That individual was not a member of the same household  
32 as the individual with whom the joint return was filed at any time  
33 during the 12-month period ending on the date the election is filed.

34 (ii) If the Franchise Tax Board demonstrates that assets were  
35 transferred between individuals filing a joint return as part of a  
36 fraudulent scheme by those individuals, an election under this  
37 subdivision by either individual shall be invalid (and subdivision  
38 (a) and the first sentence of subdivision (b) of Section 19006 shall  
39 apply to the joint return).

1 (B) An election under this subdivision for any taxable year shall  
2 be made not later than two years after the date on which the  
3 Franchise Tax Board has begun collection activities with respect  
4 to the individual making the election.

5 (C) If the Franchise Tax Board demonstrates that an individual  
6 making an election under this subdivision had actual knowledge,  
7 at the time the individual signed the return, of any item giving rise  
8 to a deficiency (or portion thereof) that is not allocable to the  
9 individual under subdivision (d), that election does not apply to  
10 that deficiency (or portion). This subparagraph does not apply  
11 where the individual with actual knowledge establishes that the  
12 individual signed the return under duress.

13 (4) (A) Notwithstanding any other provision of this subdivision,  
14 the portion of the deficiency for which the individual electing the  
15 application of this subdivision is liable (without regard to this  
16 paragraph) shall be increased by the value of any disqualified asset  
17 transferred to the individual.

18 (B) For purposes of this paragraph—

19 (i) The term “disqualified asset” means any property or right to  
20 property transferred to an individual making the election under  
21 this subdivision with respect to a joint return by the other individual  
22 filing the joint return if the principal purpose of the transfer was  
23 the avoidance of tax or payment of tax.

24 (ii) (I) For purposes of clause (i), except as provided in  
25 subclause (II), any transfer that is made after the date that is one  
26 year before the date on which the first notice of proposed  
27 assessment under Article 3 (commencing with Section 19031) of  
28 Chapter 4 is sent shall be presumed to have as its principal purpose  
29 the avoidance of tax or payment of tax.

30 (II) Subclause (I) does not apply to any transfer pursuant to a  
31 decree of divorce or separate maintenance or a written instrument  
32 incident to that decree or to any transfer that an individual  
33 establishes did not have as its principal purpose the avoidance of  
34 tax or payment of tax.

35 (d) ~~For purpose~~ *purposes* of subdivision (c)—

36 (1) The portion of any deficiency on a joint return allocated to  
37 an individual shall be the amount that bears the same ratio to the  
38 deficiency as the net amount of items taken into account in  
39 computing the deficiency and allocable to the individual under



1 paragraph (3) bears to the net amount of all items taken into  
2 account in computing the deficiency.

3 (2) If a deficiency (or portion thereof) is attributable to—

4 (A) The disallowance of a credit, or

5 (B) Any tax (other than tax imposed by Section 17041 or 17062)  
6 required to be included with the joint return, and the item is  
7 allocated to one individual under paragraph (3), that deficiency  
8 (or portion) shall be allocated to that individual. Any item so  
9 allocated may not be taken into account under paragraph (1).

10 (3) For purposes of this subdivision—

11 (A) Except as provided in paragraphs (4) and (5), any item  
12 giving rise to a deficiency on a joint return shall be allocated to  
13 individuals filing the return in the same manner as it would have  
14 been allocated if the individuals had filed separate returns for the  
15 taxable year.

16 (B) Under rules prescribed by the Franchise Tax Board, an item  
17 otherwise allocable to an individual under subparagraph (A) shall  
18 be allocated to the other individual filing the joint return to the  
19 extent the item gave rise to a tax benefit on the joint return to the  
20 other individual.

21 (C) The Franchise Tax Board may provide for an allocation of  
22 any item in a manner not prescribed by subparagraph (A) if the  
23 Franchise Tax Board establishes that the allocation is appropriate  
24 due to fraud of one or both individuals.

25 (4) If an item of deduction or credit is disallowed in its entirety  
26 solely because a separate return is filed, the disallowance shall be  
27 disregarded and the item shall be computed as if a joint return had  
28 been filed and then allocated between the spouses appropriately.

29 (5) If the liability of a child of a taxpayer is included on a joint  
30 return, that liability shall be disregarded in computing the separate  
31 liability of either spouse and that liability shall be allocated  
32 appropriately between the spouses.

33 (e) (1) In the case of an individual who elects to have  
34 subdivision (b) or (c) apply—

35 (A) (i) The determination of the Franchise Tax Board as to  
36 whether the liability is to be revised as to one individual filing the  
37 joint return shall be made not less than 30 days after notification  
38 of the other individual filing the joint return.

39 (ii) Any action taken under this section shall be treated as though  
40 it were action on a protest taken under Section 19044 and shall

1 become final upon the expiration of 30 days from the date that  
2 notice of the action is mailed to both individuals filing the joint  
3 return, unless, within that 30-day period, the individual making  
4 the election under subdivision (b) or (c) appeals the determination  
5 to the board as provided in clause (iii) or the other individual filing  
6 the joint return appeals the determination to the board as provided  
7 in Section 19045.

8 (iii) The individual making the election under subdivision (b)  
9 or (c) may appeal the determination of the Franchise Tax Board  
10 of the appropriate relief available to the individual under this  
11 section if that appeal is filed during the 30-day period prescribed  
12 in clause (ii) and the appeal shall be treated as an appeal to the  
13 board under Section 19045. Notwithstanding the preceding  
14 sentence, the individual making the election under subdivision (b)  
15 or (c) may appeal to the board at any time after the date that is six  
16 months after the date the election is filed with the Franchise Tax  
17 Board and before the close of the 30-day period prescribed in  
18 clause (ii).

19 (B) Except as otherwise provided in Section 19081 or 19082,  
20 no levy or proceeding in court shall be made, begun, or prosecuted  
21 against the individual making an election under subdivision (b) or  
22 (c) for collection of any assessment to which the election relates  
23 until the expiration of the 30-day period described in clause (ii) of  
24 subparagraph (A), or, if an appeal to the board has been filed under  
25 clause (iii) or Section 19045, until the decision of the board has  
26 become final.

27 (2) The running of the period of limitations in Section 19371  
28 on the collection of the assessment to which the petition under  
29 subparagraph (A) of paragraph (1) relates shall be suspended for  
30 the period during which the Franchise Tax Board is prohibited by  
31 subparagraph (B) of paragraph (1) from collecting by levy or a  
32 proceeding in court and for 60 days thereafter.

33 (3) (A) Except as provided in subparagraph (B), notwithstanding  
34 any other law or rule of law (other than Section 19306 and Article  
35 6 (commencing with Section 19441) of Chapter 6), a credit or  
36 refund shall be allowed or made to the extent attributable to the  
37 application of this section.

38 (B) In the case of any election under subdivision (b) or (c), if a  
39 decision of the board in any prior proceeding for the same taxable  
40 year has become final, that decision shall be conclusive except

1 with respect to the qualification of the individual for relief that  
2 was not an issue in that proceeding. The exception contained in  
3 the preceding sentence does not apply if the board determines that  
4 the individual participated meaningfully in the prior proceeding.

5 (C) No credit or refund shall be allowed as a result of an election  
6 under subdivision (c).

7 (f) Under procedures prescribed by the Franchise Tax Board,  
8 if taking into account all the facts and circumstances, it is  
9 inequitable to hold the individual liable for any unpaid tax or any  
10 deficiency (or any portion of either), and relief is not available to  
11 the individual under subdivision (b) or (c), the Franchise Tax Board  
12 may relieve the individual of that liability.

13 (g) (1) The Franchise Tax Board may prescribe regulations  
14 providing methods for allocation of items other than the methods  
15 under paragraph (3) of subdivision (d).

16 (2) It is the intent of the Legislature that, in construing this  
17 section and any other sections that are specifically cross-referenced  
18 in this section, any regulations that may be promulgated by the  
19 Secretary of the Treasury under Section 6015 of the Internal  
20 Revenue Code, as amended by Public Law 105-206, shall apply  
21 to the extent that those regulations do not conflict with this section  
22 or with any regulations that may be promulgated by the Franchise  
23 Tax Board.

24 (h) (1) Except as provided in paragraph (2), the amendments  
25 made by Section 5 of Chapter 931 of the Statutes of 1999 shall  
26 apply to any liability for tax arising after October 10, 1999, and  
27 any liability for tax arising on or before that date but remaining  
28 unpaid as of that date.

29 (2) The period specified under subparagraph (E) of paragraph  
30 (1) of subdivision (b) or subparagraph (B) of paragraph (3) of  
31 subdivision (c) does not expire before the date that is four years  
32 after the date of the first collection activity after October 10, 1999.

33 (i) An individual may not be granted relief under this section if  
34 a court has revised the tax liability in a proceeding for dissolution  
35 of the marriage in accordance with subdivision (b) of Section  
36 19006.

37 (j) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
38 Division 3 of Title 2 of the Government Code shall not apply to  
39 any procedure or rule prescribed by the Franchise Tax Board  
40 pursuant to this section.

1 (k) This section shall become operative on January 1, 2009.

2 SEC. 40. Section 30182 of the Revenue and Taxation Code is  
3 amended to read:

4 30182. (a) Except as provided in subdivision (b), every  
5 distributor shall file, on or before the 25th day of each month, a  
6 report in the form as prescribed by the board, that may include,  
7 but not be limited to, electronic media with respect to distributions  
8 of cigarettes and purchases of stamps and meter register units  
9 during the preceding month and any other information as the board  
10 may require to carry out this part.

11 (b) Reports shall be authenticated in a form, or pursuant to,  
12 methods as may be prescribed by the board.

13 SEC. 41. Section 30187 of the Revenue and Taxation Code is  
14 amended to read:

15 30187. Every consumer or user subject to the tax resulting  
16 from a distribution of cigarettes or tobacco products within the  
17 meaning of subdivision (b) of Section 30008 from whom the tax  
18 has not been collected under Section 30108 shall, on or before the  
19 last day of the month following the end of the quarter, file with  
20 the board a report of the amount of cigarettes or tobacco products  
21 received by him or her in the preceding calendar quarter in that  
22 detail as the board may prescribe and in the form as prescribed by  
23 the board, which may include, but not be limited to, electronic  
24 media, submitting with the report the amount of tax due. Reports  
25 shall be authenticated in a form or pursuant to methods as may be  
26 prescribed by the board.

27 SEC. 42. Section 30285 is added to the Revenue and Taxation  
28 Code, to read:

29 30285. (a) Under regulations prescribed by the board, if:

30 (1) A tax liability under this part was understated by a failure  
31 to file a return or report, or both, required to be filed under this  
32 part, by the omission of an amount properly includable therein, or  
33 by erroneous deductions or credits claimed on a return or report,  
34 or both, and the understatement of tax liability is attributable to  
35 one spouse; or any amount of the tax reported on a return or report,  
36 or both, was unpaid and the nonpayment of the reported tax liability  
37 is attributable to one spouse.

38 (2) The other spouse establishes that he or she did not know of,  
39 and had no reason to know of, that understatement or nonpayment.

1 (3) Taking into account whether or not the other spouse  
2 significantly benefited directly or indirectly from the  
3 understatement or the nonpayment and taking into account all other  
4 facts and circumstances, it is inequitable to hold the other spouse  
5 liable for the deficiency in tax attributable to that understatement  
6 or nonpayment, then the other spouse shall be relieved of liability  
7 for tax (including interest, penalties, and other amounts) to the  
8 extent that the liability is attributable to that understatement or  
9 nonpayment of tax.

10 (b) For purposes of this section, the determination of the spouse  
11 to whom items of understatement or nonpayment are attributable  
12 shall be made without regard to community property laws.

13 (c) This section shall apply to all calendar months subject to the  
14 provisions of this part, but shall not apply to any calendar month  
15 that is more than five years from the final date on the board-issued  
16 determination, five years from the return or report due date for  
17 nonpayment on a return or report, or one year from the first contact  
18 with the spouse making a claim under this section; or that has been  
19 closed by res judicata, whichever is later.

20 (d) For purposes of paragraph (2) of subdivision (a), “reason to  
21 know” means whether or not a reasonably prudent person would  
22 have had reason to know of the understatement or nonpayment.

23 (e) For purposes of this section, with respect to a failure to file  
24 a return or report, or both, or an omission of an item from the return  
25 or report, or both, “attributable to one spouse” may be determined  
26 by whether a spouse rendered substantial service as a distributor  
27 of cigarettes or tobacco products or who sells or accepts orders for  
28 cigarettes or tobacco products to be transported to a consumer in  
29 this state from somewhere out of this state to which the  
30 understatement is attributable. If neither spouse rendered substantial  
31 services as a distributor, then the attribution of applicable items  
32 of understatement shall be treated as community property. An  
33 erroneous deduction or credit shall be attributable to the spouse  
34 who caused that deduction or credit to be entered on the return or  
35 report, or both.

36 (f) Under procedures prescribed by the board, if, taking into  
37 account all the facts and circumstances, it is inequitable to hold  
38 the other spouse liable for any unpaid tax or any deficiency (or  
39 any portion of either) attributable to any item for which relief is

1 not available under subdivision (a), the board may relieve the other  
2 spouse of that liability.

3 (g) For purposes of this section, registered domestic partners,  
4 as defined in Section 297 of the Family Code, have the same rights,  
5 protections, and benefits as provided by this section, and are subject  
6 to the same responsibilities, obligations, and duties as imposed by  
7 this section, as are granted to and imposed upon spouses.

8 (h) The relief provided by this section shall apply retroactively  
9 to liabilities arising prior to the effective date of this section.

10 SEC. 43. Section 32258 is added to the Revenue and Taxation  
11 Code, to read:

12 32258. (a) Under regulations prescribed by the board, if:

13 (1) A tax liability under this part was understated by a failure  
14 to file a return required to be filed under this part, by the omission  
15 of an amount properly includable therein, or by erroneous  
16 deductions or credits claimed on a return, and the understatement  
17 of tax liability is attributable to one spouse; or any amount of the  
18 tax reported on a return was unpaid and the nonpayment of the  
19 reported tax liability is attributable to one spouse.

20 (2) The other spouse establishes that he or she did not know of,  
21 and had no reason to know of, that understatement or nonpayment.

22 (3) Taking into account whether or not the other spouse  
23 significantly benefited directly or indirectly from the  
24 understatement or the nonpayment and taking into account all other  
25 facts and circumstances, it is inequitable to hold the other spouse  
26 liable for the deficiency in tax attributable to that understatement  
27 or nonpayment, then the other spouse shall be relieved of liability  
28 for tax (including interest, penalties, and other amounts) to the  
29 extent that the liability is attributable to that understatement or  
30 nonpayment of tax.

31 (b) For purposes of this section, the determination of the spouse  
32 to whom items of understatement or nonpayment are attributable  
33 shall be made without regard to community property laws.

34 (c) This section shall apply to all calendar months, quarters, or  
35 years subject to the provisions of this part, but shall not apply to  
36 any calendar month, quarter, or year that is more than five years  
37 from the final date on the board-issued determination, five years  
38 from the return due date for nonpayment on a return, or one year  
39 from the first contact with the spouse making a claim under this  
40 section; or that has been closed by res judicata, whichever is later.

1 (d) For purposes of paragraph (2) of subdivision (a), “reason to  
2 know” means whether or not a reasonably prudent person would  
3 have had reason to know of the understatement or nonpayment.

4 (e) For purposes of this section, with respect to a failure to file  
5 a return or an omission of an item from the return, “attributable to  
6 one spouse” may be determined by whether a spouse rendered  
7 substantial service as a manufacturer, wine-grower, importer, or  
8 seller of beer or wine, or as manufacturer, distilled spirits  
9 manufacturer’s agent, brandy manufacturer, rectifier, wholesaler,  
10 or seller of distilled spirits to which the understatement is  
11 attributable. If neither spouse rendered substantial services as a  
12 manufacturer, wine-grower, importer, or seller of beer or wine, or  
13 as manufacturer, distilled spirits manufacturer’s agent, brandy  
14 manufacturer, rectifier, wholesaler, or seller of distilled spirits,  
15 then the attribution of applicable items of understatement shall be  
16 treated as community property. An erroneous deduction or credit  
17 shall be attributable to the spouse who caused that deduction or  
18 credit to be entered on the return.

19 (f) Under procedures prescribed by the board, if, taking into  
20 account all the facts and circumstances, it is inequitable to hold  
21 the other spouse liable for any unpaid tax or any deficiency (or  
22 any portion of either) attributable to any item for which relief is  
23 not available under subdivision (a), the board may relieve the other  
24 spouse of that liability.

25 (g) For purposes of this section, registered domestic partners,  
26 as defined in Section 297 of the Family Code, have the same rights,  
27 protections, and benefits as provided by this section, and are subject  
28 to the same responsibilities, obligations, and duties as imposed by  
29 this section, as are granted to and imposed upon spouses.

30 (h) The relief provided by this section shall apply retroactively  
31 to liabilities arising prior to the effective date of this section.

32 SEC. 44. Section 38454.5 is added to the Revenue and Taxation  
33 Code, to read:

34 38454.5. (a) Under regulations prescribed by the board, if:

35 (1) A tax liability under this part was understated by a failure  
36 to file a return required to be filed under this part, by the omission  
37 of an amount properly includable therein, or by erroneous  
38 deductions or credits claimed on a return, and the understatement  
39 of tax liability is attributable to one spouse; or any amount of the

1 tax reported on a return was unpaid and the nonpayment of the  
2 reported tax liability is attributable to one spouse.

3 (2) The other spouse establishes that he or she did not know of,  
4 and had no reason to know of, that understatement or nonpayment.

5 (3) Taking into account whether or not the other spouse  
6 significantly benefited directly or indirectly from the  
7 understatement or the nonpayment and taking into account all other  
8 facts and circumstances, it is inequitable to hold the other spouse  
9 liable for the deficiency in tax attributable to that understatement  
10 or nonpayment, then the other spouse shall be relieved of liability  
11 for tax (including interest, penalties, and other amounts) to the  
12 extent that the liability is attributable to that understatement or  
13 nonpayment of tax.

14 (b) For purposes of this section, the determination of the spouse  
15 to whom items of understatement or nonpayment are attributable  
16 shall be made without regard to community property laws.

17 (c) This section shall apply to all calendar quarters subject to  
18 the provisions of this part, but shall not apply to any calendar  
19 quarter that is more than five years from the final date on the  
20 board-issued determination, five years from the return due date  
21 for nonpayment on a return, or one year from the first contact with  
22 the spouse making a claim under this section; or that has been  
23 closed by res judicata, whichever is later.

24 (d) For purposes of paragraph (2) of subdivision (a), “reason to  
25 know” means whether or not a reasonably prudent person would  
26 have had reason to know of the understatement or nonpayment.

27 (e) For purposes of this section, with respect to a failure to file  
28 a return or an omission of an item from the return, “attributable to  
29 one spouse” may be determined by whether a spouse rendered  
30 substantial service as a timber owner who harvests timber or causes  
31 it to be harvested, is first to acquire title to felled or downed timber  
32 from an exempt person or agency, or without authorization,  
33 harvests or causes to be harvested timber owned by another to  
34 which the understatement is attributable. If neither spouse rendered  
35 substantial services as a timber owner, then the attribution of  
36 applicable items of understatement shall be treated as community  
37 property. An erroneous deduction or credit shall be attributable to  
38 the spouse who caused that deduction or credit to be entered on  
39 the return.



1 (f) Under procedures prescribed by the board, if, taking into  
2 account all the facts and circumstances, it is inequitable to hold  
3 the other spouse liable for any unpaid tax or any deficiency (or  
4 any portion of either) attributable to any item for which relief is  
5 not available under subdivision (a), the board may relieve the other  
6 spouse of that liability.

7 (g) For purposes of this section, registered domestic partners,  
8 as defined in Section 297 of the Family Code, have the same rights,  
9 protections, and benefits as provided by this section, and are subject  
10 to the same responsibilities, obligations, and duties as imposed by  
11 this section, as are granted to and imposed upon spouses.

12 (h) The relief provided by this section shall apply retroactively  
13 to liabilities arising prior to the effective date of this section.

14 SEC. 45. Section 40105 is added to the Revenue and Taxation  
15 Code, to read:

16 40105. (a) Under regulations prescribed by the board, if:

17 (1) A surcharge liability under this part was understated by a  
18 failure to file a return required to be filed under this part, by the  
19 omission of an amount properly includable therein, or by erroneous  
20 deductions or credits claimed on a return, and the understatement  
21 of surcharge liability is attributable to one spouse; or any amount  
22 of the surcharge reported on a return was unpaid and the  
23 nonpayment of the reported surcharge liability is attributable to  
24 one spouse.

25 (2) The other spouse establishes that he or she did not know of,  
26 and had no reason to know of, that understatement or nonpayment.

27 (3) Taking into account whether or not the other spouse  
28 significantly benefited directly or indirectly from the  
29 understatement or the nonpayment and taking into account all other  
30 facts and circumstances, it is inequitable to hold the other spouse  
31 liable for the deficiency in surcharge attributable to that  
32 understatement or nonpayment, then the other spouse shall be  
33 relieved of liability for the surcharge (including interest, penalties,  
34 and other amounts) to the extent that the liability is attributable to  
35 that understatement or nonpayment of the surcharge.

36 (b) For purposes of this section, the determination of the spouse  
37 to whom items of understatement or nonpayment are attributable  
38 shall be made without regard to community property laws.

39 (c) This section shall apply to all calendar quarters subject to  
40 the provisions of this part, but shall not apply to any calendar

1 quarter that is more than five years from the final date on the  
2 board-issued determination, five years from the return due date  
3 for nonpayment on a return, or one year from the first contact with  
4 the spouse making a claim under this section; or that has been  
5 closed by res judicata, whichever is later.

6 (d) For purposes of paragraph (2) of subdivision (a), “reason to  
7 know” means whether or not a reasonably prudent person would  
8 have had reason to know of the understatement or nonpayment.

9 (e) For purposes of this section, with respect to a failure to file  
10 a return or an omission of an item from the return, “attributable to  
11 one spouse” may be determined by whether a spouse rendered  
12 substantial service as an electric utility making sales of electrical  
13 energy or as a consumer of electrical energy to which the  
14 understatement is attributable. If neither spouse rendered substantial  
15 services as an electric utility or a consumer, then the attribution  
16 of applicable items of understatement shall be treated as community  
17 property. An erroneous deduction or credit shall be attributable to  
18 the spouse who caused that deduction or credit to be entered on  
19 the return.

20 (f) Under procedures prescribed by the board, if, taking into  
21 account all the facts and circumstances, it is inequitable to hold  
22 the other spouse liable for any unpaid surcharge or any deficiency  
23 (or any portion of either) attributable to any item for which relief  
24 is not available under subdivision (a), the board may relieve the  
25 other spouse of that liability.

26 (g) For purposes of this section, registered domestic partners,  
27 as defined in Section 297 of the Family Code, have the same rights,  
28 protections, and benefits as provided by this section, and are subject  
29 to the same responsibilities, obligations, and duties as imposed by  
30 this section, as are granted to and imposed upon spouses.

31 (h) The relief provided by this section shall apply retroactively  
32 to liabilities arising prior to the effective date of this section.

33 SEC. 46. Section 41030 of the Revenue and Taxation Code is  
34 amended to read:

35 41030. The Department of General Services shall determine  
36 annually, on or before October 1, a surcharge rate that it estimates  
37 will produce sufficient revenue to fund the current fiscal year’s  
38 911 costs. The surcharge rate shall be determined by dividing the  
39 costs (including incremental costs) the Department of General  
40 Services estimates for the current fiscal year of 911 plans approved

1 pursuant to Section 53115 of the Government Code, less the  
2 available balance in the State Emergency Telephone Number  
3 Account in the General Fund, by its estimate of the charges for  
4 intrastate telephone communications services to which the  
5 surcharge will apply for the period of January 1 to December 31  
6 of the next succeeding calendar year, but in no event shall such  
7 surcharge rate in any year be greater than three-quarters of 1  
8 percent nor less than one-half of 1 percent.

9 SEC. 47. Section 41031 of the Revenue and Taxation Code is  
10 amended to read:

11 41031. The Department of General Services shall make its  
12 determination of such surcharge rate each year no later than  
13 October 1 and shall notify the board of the new rate, which shall  
14 be fixed by the board to be effective with respect to charges made  
15 for intrastate telephone communication services on or after January  
16 1 of the next succeeding calendar year.

17 SEC. 48. Section 41032 of the Revenue and Taxation Code is  
18 amended to read:

19 41032. Immediately upon notification by the Department of  
20 General Services and fixing the surcharge rate, the board shall  
21 each year no later than November 15 publish in its minutes the  
22 new rate, and it shall notify by mail every service supplier  
23 registered with it of the new rate.

24 SEC. 49. Section 41099 is added to the Revenue and Taxation  
25 Code, to read:

26 41099. (a) Under regulations prescribed by the board, if:

27 (1) A surcharge liability under this part was understated by a  
28 failure to file a return required to be filed under this part, by the  
29 omission of an amount properly includable therein, or by erroneous  
30 deductions or credits claimed on a return, and the understatement  
31 of surcharge liability is attributable to one spouse; or any amount  
32 of the surcharge reported on a return was unpaid and the  
33 nonpayment of the reported surcharge liability is attributable to  
34 one spouse.

35 (2) The other spouse establishes that he or she did not know of,  
36 and had no reason to know of, that understatement or nonpayment.

37 (3) Taking into account whether or not the other spouse  
38 significantly benefited directly or indirectly from the  
39 understatement or the nonpayment and taking into account all other  
40 facts and circumstances, it is inequitable to hold the other spouse

1 liable for the deficiency in surcharge attributable to that  
2 understatement or nonpayment, then the other spouse shall be  
3 relieved of liability for the surcharge (including interest, penalties,  
4 and other amounts) to the extent that the liability is attributable to  
5 that understatement or nonpayment of the surcharge.

6 (b) For purposes of this section, the determination of the spouse  
7 to whom items of understatement or nonpayment are attributable  
8 shall be made without regard to community property laws.

9 (c) This section shall apply to all calendar months, quarters, or  
10 years subject to the provisions of this part, but shall not apply to  
11 any calendar month, quarter, or year that is more than five years  
12 from the final date on the board-issued determination, five years  
13 from the return due date for nonpayment on a return, or one year  
14 from the first contact with the spouse making a claim under this  
15 section; or that has been closed by res judicata, whichever is later.

16 (d) For purposes of paragraph (2) of subdivision (a), “reason to  
17 know” means whether or not a reasonably prudent person would  
18 have had reason to know of the understatement or nonpayment.

19 (e) For purposes of this section, with respect to a failure to file  
20 a return or an omission of an item from the return, “attributable to  
21 one spouse” may be determined by whether a spouse rendered  
22 substantial service as a service supplier of intrastate telephone  
23 communications services to service users or as a user of intrastate  
24 telephone communication services to which the understatement is  
25 attributable. If neither spouse rendered substantial services as a  
26 service supplier or as a service user, then the attribution of  
27 applicable items of understatement shall be treated as community  
28 property. An erroneous deduction or credit shall be attributable to  
29 the spouse who caused that deduction or credit to be entered on  
30 the return.

31 (f) Under procedures prescribed by the board, if, taking into  
32 account all the facts and circumstances, it is inequitable to hold  
33 the other spouse liable for any unpaid surcharge or any deficiency  
34 (or any portion of either) attributable to any item for which relief  
35 is not available under subdivision (a), the board may relieve the  
36 other spouse of that liability.

37 (g) For purposes of this section, registered domestic partners,  
38 as defined in Section 297 of the Family Code, have the same rights,  
39 protections, and benefits as provided by this section, and are subject

1 to the same responsibilities, obligations, and duties as imposed by  
2 this section, as are granted to and imposed upon spouses.

3 (h) The relief provided by this section shall apply retroactively  
4 to liabilities arising prior to the effective date of this section.

5 SEC. 50. Section 43159.1 is added to the Revenue and Taxation  
6 Code, to read:

7 43159.1. (a) Under regulations prescribed by the board, except  
8 for a fee imposed pursuant to Section 105310 of the Health and  
9 Safety Code, if:

10 (1) A tax liability under this part was understated by a failure  
11 to file a return required to be filed under this part, by the omission  
12 of an amount properly includable therein, or by erroneous  
13 deductions or credits claimed on a return, and the understatement  
14 of tax liability is attributable to one spouse; or any amount of the  
15 tax reported on a return was unpaid and the nonpayment of the  
16 reported tax liability is attributable to one spouse.

17 (2) The other spouse establishes that he or she did not know of,  
18 and had no reason to know of, that understatement or nonpayment.

19 (3) Taking into account whether or not the other spouse  
20 significantly benefited directly or indirectly from the  
21 understatement or the nonpayment and taking into account all other  
22 facts and circumstances, it is inequitable to hold the other spouse  
23 liable for the deficiency in tax attributable to that understatement  
24 or nonpayment, then the other spouse shall be relieved of liability  
25 for tax (including interest, penalties, and other amounts) to the  
26 extent that the liability is attributable to that understatement or  
27 nonpayment of tax.

28 (b) For purposes of this section, the determination of the spouse  
29 to whom items of understatement or nonpayment are attributable  
30 shall be made without regard to community property laws.

31 (c) This section shall apply to all calendar months or years  
32 subject to the provisions of this part, but shall not apply to any  
33 calendar month or year that is more than five years from the final  
34 date on the board-issued determination, five years from the return  
35 due date for nonpayment on a return, or one year from the first  
36 contact with the spouse making a claim under this section; or that  
37 has been closed by res judicata, whichever is later.

38 (d) For purposes of paragraph (2) of subdivision (a), “reason to  
39 know” means whether or not a reasonably prudent person would  
40 have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, “attributable to one spouse” may be determined by whether a spouse rendered substantial service as a taxpayer with respect to the taxes administered under this part to which the understatement is attributable. If neither spouse rendered substantial services as a taxpayer, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Section 297 of the Family Code, have the same rights, protections, and benefits as provided by this section, and are subject to the same responsibilities, obligations, and duties as imposed by this section, as are granted to and imposed upon spouses.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

SEC. 51. Section 43159.2 is added to the Revenue and Taxation Code, to read:

43159.2. (a) Under regulations prescribed by the board, with respect to a fee imposed pursuant to Section 105310 of the Health and Safety Code, if:

(1) A fee liability due on a notice of determination or other billing document for collection of the fee under this part was unpaid and the nonpayment of the fee liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that nonpayment.

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in the fee attributable to that nonpayment, then the other spouse shall be relieved of liability for the fee (including interest, penalties, and

1 other amounts) to the extent that the liability is attributable to that  
2 nonpayment of the fee.

3 (b) For purposes of this section, the determination of the spouse  
4 to whom items of nonpayment are attributable shall be made  
5 without regard to community property laws.

6 (c) This section shall apply to all calendar years subject to the  
7 provisions of this part, but shall not apply to any calendar year that  
8 is more than five years from the final date on the board-issued  
9 determination or other similar billing document for collection of  
10 the fee, five years from the due date for payment on the billing, or  
11 one year from the first contact with the spouse making a claim  
12 under this section; or that has been closed by *res judicata*,  
13 whichever is later.

14 (d) For purposes of paragraph (2) of subdivision (a), “reason to  
15 know” means whether or not a reasonably prudent person would  
16 have had reason to know of the understatement or nonpayment.

17 (e) For purposes of this section, with respect to a failure to pay  
18 a notice of determination—~~of~~ *or* similar billing document for  
19 collection of the fee, “attributable to one spouse” may be  
20 determined by whether a spouse rendered substantial service as a  
21 fee payer with respect to a fee imposed under Section 105310 of  
22 the Health and Safety Code to which the nonpayment is  
23 attributable. If neither spouse rendered substantial services as a  
24 fee payer, then the attribution of the nonpayment shall be treated  
25 as community property.

26 (f) Under procedures prescribed by the board, if, taking into  
27 account all the facts and circumstances, it is inequitable to hold  
28 the other spouse liable for any unpaid fee or any deficiency (or  
29 any portion of either) attributable to any item for which relief is  
30 not available under subdivision (a), the board may relieve the other  
31 spouse of that liability.

32 (g) For purposes of this section, registered domestic partners,  
33 as defined in Section 297 of the Family Code, have the same rights,  
34 protections, and benefits as provided by this section, and are subject  
35 to the same responsibilities, obligations, and duties as imposed by  
36 this section, as are granted to and imposed upon spouses.

37 (h) The relief provided by this section shall apply retroactively  
38 to liabilities arising prior to the effective date of this section.

39 SEC. 52. Section 45158 is added to the Revenue and Taxation  
40 Code, to read:

1     45158. (a) Under regulations prescribed by the board, if:

2     (1) A fee liability under this part was understated by a failure  
3     to file a return required to be filed under this part, by the omission  
4     of an amount properly includable therein, or by erroneous  
5     deductions or credits claimed on a return, and the understatement  
6     of fee liability is attributable to one spouse; or any amount of the  
7     fee reported on a return was unpaid and the nonpayment of the  
8     reported fee liability is attributable to one spouse.

9     (2) The other spouse establishes that he or she did not know of,  
10    and had no reason to know of, that understatement or nonpayment.

11    (3) Taking into account whether or not the other spouse  
12    significantly benefited directly or indirectly from the  
13    understatement or the nonpayment and taking into account all other  
14    facts and circumstances, it is inequitable to hold the other spouse  
15    liable for the deficiency in fee attributable to that understatement  
16    or nonpayment, then the other spouse shall be relieved of liability  
17    for the fee (including interest, penalties, and other amounts) to the  
18    extent that the liability is attributable to that understatement or  
19    nonpayment of the fee.

20    (b) For purposes of this section, the determination of the spouse  
21    to whom items of understatement or nonpayment are attributable  
22    shall be made without regard to community property laws.

23    (c) This section shall apply to all calendar quarters subject to  
24    the provisions of this part, but shall not apply to any calendar  
25    quarter that is more than five years from the final date on the  
26    board-issued determination, five years from the return due date  
27    for nonpayment on a return, or one year from the first contact with  
28    the spouse making a claim under this section; or that has been  
29    closed by res judicata, whichever is later.

30    (d) For purposes of paragraph (2) of subdivision (a), “reason to  
31    know” means whether or not a reasonably prudent person would  
32    have had reason to know of the understatement or nonpayment.

33    (e) For purposes of this section, with respect to a failure to file  
34    a return or an omission of an item from the return, “attributable to  
35    one spouse” may be determined by whether a spouse rendered  
36    substantial service as an operator of a facility for disposal of solid  
37    waste to which the understatement is attributable. If neither spouse  
38    rendered substantial services as an operator, then the attribution  
39    of applicable items of understatement shall be treated as community  
40    property. An erroneous deduction or credit shall be attributable to



1 the spouse who caused that deduction or credit to be entered on  
2 the return.

3 (f) Under procedures prescribed by the board, if, taking into  
4 account all the facts and circumstances, it is inequitable to hold  
5 the other spouse liable for any unpaid tax or any deficiency (or  
6 any portion of either) attributable to any item for which relief is  
7 not available under subdivision (a), the board may relieve the other  
8 spouse of that liability.

9 (g) For purposes of this section, registered domestic partners,  
10 as defined in Section 297 of the Family Code, have the same rights,  
11 protections, and benefits as provided by this section, and are subject  
12 to the same responsibilities, obligations, and duties as imposed by  
13 this section, as are granted to and imposed upon spouses.

14 (h) The relief provided by this section shall apply retroactively  
15 to liabilities arising prior to the effective date of this section.

16 SEC. 53. Section 46159 is added to the Revenue and Taxation  
17 Code, to read:

18 46159. (a) Under regulations prescribed by the board, if:

19 (1) A fee liability under this part was understated by a failure  
20 to file a return required to be filed under this part, by the omission  
21 of an amount properly includable therein, or by erroneous  
22 deductions or credits claimed on a return, and the understatement  
23 of the fee liability is attributable to one spouse; or any amount of  
24 the fee reported on a return was unpaid and the nonpayment of the  
25 reported fee liability is attributable to one spouse.

26 (2) The other spouse establishes that he or she did not know of,  
27 and had no reason to know of, that understatement or nonpayment.

28 (3) Taking into account whether or not the other spouse  
29 significantly benefited directly or indirectly from the  
30 understatement or the nonpayment and taking into account all other  
31 facts and circumstances, it is inequitable to hold the other spouse  
32 liable for the deficiency in fee attributable to that understatement  
33 or nonpayment, then the other spouse shall be relieved of liability  
34 for the fee (including interest, penalties, and other amounts) to the  
35 extent that the liability is attributable to that understatement or  
36 nonpayment of the fee.

37 (b) For purposes of this section, the determination of the spouse  
38 to whom items of understatement or nonpayment are attributable  
39 shall be made without regard to community property laws.

1 (c) This section shall apply to all calendar months subject to the  
2 provisions of this part, but shall not apply to any calendar month  
3 that is more than five years from the final date on the board-issued  
4 determination, five years from the return due date for nonpayment  
5 on a return, or one year from the first contact with the spouse  
6 making a claim under this section; or that has been closed by res  
7 judicata, whichever is later.

8 (d) For purposes of paragraph (2) of subdivision (a), “reason to  
9 know” means whether or not a reasonably prudent person would  
10 have had reason to know of the understatement or nonpayment.

11 (e) For purposes of this section, with respect to a failure to file  
12 a return or an omission of an item from the return, “attributable to  
13 one spouse” may be determined by whether a spouse rendered  
14 substantial service as an operator of a marine terminal, a pipeline,  
15 or a refinery engaged in activities subject to fees under this part  
16 to which the understatement is attributable. If neither spouse  
17 rendered substantial services as an operator, then the attribution  
18 of applicable items of understatement shall be treated as community  
19 property. An erroneous deduction or credit shall be attributable to  
20 the spouse who caused that deduction or credit to be entered on  
21 the return.

22 (f) Under procedures prescribed by the board, if, taking into  
23 account all the facts and circumstances, it is inequitable to hold  
24 the other spouse liable for any unpaid fee or any deficiency (or  
25 any portion of either) attributable to any item for which relief is  
26 not available under subdivision (a), the board may relieve the other  
27 spouse of that liability.

28 (g) For purposes of this section, registered domestic partners,  
29 as defined in Section 297 of the Family Code, have the same rights,  
30 protections, and benefits as provided by this section, and are subject  
31 to the same responsibilities, obligations, and duties as imposed by  
32 this section, as are granted to and imposed upon spouses.

33 (h) The relief provided by this section shall apply retroactively  
34 to liabilities arising prior to the effective date of this section.

35 SEC. 54. Section 50112.6 is added to the Revenue and Taxation  
36 Code, to read:

37 50112.6. (a) Under regulations prescribed by the board, if:

38 (1) A fee liability under this part was understated by a failure  
39 to file a return required to be filed under this part, by the omission  
40 of an amount properly includable therein, or by erroneous

1 deductions or credits claimed on a return, and the understatement  
2 of the fee liability is attributable to one spouse; or any amount of  
3 the fee reported on a return was unpaid and the nonpayment of the  
4 reported fee liability is attributable to one spouse.

5 (2) The other spouse establishes that he or she did not know of,  
6 and had no reason to know of, that understatement or nonpayment.

7 (3) Taking into account whether or not the other spouse  
8 significantly benefited directly or indirectly from the  
9 understatement or the nonpayment and taking into account all other  
10 facts and circumstances, it is inequitable to hold the other spouse  
11 liable for the deficiency in the fee attributable to that  
12 understatement or nonpayment, then the other spouse shall be  
13 relieved of liability for the fee (including interest, penalties, and  
14 other amounts) to the extent that the liability is attributable to that  
15 understatement or nonpayment of the fee.

16 (b) For purposes of this section, the determination of the spouse  
17 to whom items of understatement or nonpayment are attributable  
18 shall be made without regard to community property laws.

19 (c) This section shall apply to all calendar quarters subject to  
20 the provisions of this part, but shall not apply to any calendar  
21 quarter that is more than five years from the final date on the  
22 board-issued determination, five years from the return due date  
23 for nonpayment on a return, or one year from the first contact with  
24 the spouse making a claim under this section; or that has been  
25 closed by res judicata, whichever is later.

26 (d) For purposes of paragraph (2) of subdivision (a), “reason to  
27 know” means whether or not a reasonably prudent person would  
28 have had reason to know of the understatement or nonpayment.

29 (e) For purposes of this section, with respect to a failure to file  
30 a return or an omission of an item from the return, “attributable to  
31 one spouse” may be determined by whether a spouse rendered  
32 substantial service as an owner of an underground storage tank  
33 containing petroleum that is subject to fees imposed by this part  
34 to which the understatement is attributable. If neither spouse  
35 rendered substantial services as an owner, then the attribution of  
36 applicable items of understatement shall be treated as community  
37 property. An erroneous deduction or credit shall be attributable to  
38 the spouse who caused that deduction or credit to be entered on  
39 the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Section 297 of the Family Code, have the same rights, protections, and benefits as provided by this section, and are subject to the same responsibilities, obligations, and duties as imposed by this section, as are granted to and imposed upon spouses.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

SEC. 55. Section 55045.1 is added to the Revenue and Taxation Code, to read:

55045.1. (a) Under regulations prescribed by the board, if:

(1) A tax or fee liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax or fee liability is attributable to one spouse; or any amount of the tax or fee reported on a return was unpaid and the nonpayment of the reported tax or fee liability is attributable to one spouse, or any amount of the fee due on a notice of determination or similar billing document used for collection of the fee was unpaid and the nonpayment of the fee liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment.

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in the tax or fee attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for the tax or fee (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax or fee.

1 (b) For purposes of this section, the determination of the spouse  
2 to whom items of understatement or nonpayment are attributable  
3 shall be made without regard to community property laws.

4 (c) This section shall apply to all calendar months, quarters, or  
5 years subject to the provisions of this part, but shall not apply to  
6 any calendar month, quarter, or year that is more than five years  
7 from the final date on the board-issued determination or similar  
8 billing document for collection of the fee, five years from the return  
9 due date for nonpayment on a return, or one year from the first  
10 contact with the spouse making a claim under this section; or that  
11 has been closed by res judicata, whichever is later.

12 (d) For purposes of paragraph (2) of subdivision (a), “reason to  
13 know” means whether or not a reasonably prudent person would  
14 have had reason to know of the understatement or nonpayment.

15 (e) For purposes of this section, with respect to a failure to file  
16 a return or an omission of an item from the return, “attributable to  
17 one spouse” may be determined by whether a spouse rendered  
18 substantial service as a taxpayer or fee payer engaged in an activity  
19 or transaction that is subject to a tax or fee administered under this  
20 part to which the understatement or nonpayment is attributable. If  
21 neither spouse rendered substantial services as a taxpayer or fee  
22 payer, then the attribution of applicable items of understatement  
23 or nonpayment shall be treated as community property. An  
24 erroneous deduction or credit shall be attributable to the spouse  
25 who caused that deduction or credit to be entered on the return.

26 (f) Under procedures prescribed by the board, if, taking into  
27 account all the facts and circumstances, it is inequitable to hold  
28 the other spouse liable for any unpaid tax or fee or any deficiency  
29 (or any portion of either) attributable to any item for which relief  
30 is not available under subdivision (a), the board may relieve the  
31 other spouse of that liability.

32 (g) For purposes of this section, registered domestic partners,  
33 as defined in Section 297 of the Family Code, have the same rights,  
34 protections, and benefits as provided by this section, and are subject  
35 to the same responsibilities, obligations, and duties as imposed by  
36 this section, as are granted to and imposed upon spouses.

37 (h) The relief provided by this section shall apply retroactively  
38 to liabilities arising prior to the effective date of this section.

39 SEC. 56. Section 60210.5 is added to the Revenue and Taxation  
40 Code, to read:

1     60210.5. (a) Under regulations prescribed by the board, if:

2     (1) A tax liability under this part was understated by a failure  
3     to file a return required to be filed under this part, by the omission  
4     of an amount properly includable therein, or by erroneous  
5     deductions or credits claimed on a return, and the understatement  
6     of tax liability is attributable to one spouse; or any amount of the  
7     tax reported on a return was unpaid and the nonpayment of the  
8     reported tax liability is attributable to one spouse.

9     (2) The other spouse establishes that he or she did not know of,  
10    and had no reason to know of, that understatement or nonpayment.

11    (3) Taking into account whether or not the other spouse  
12    significantly benefited directly or indirectly from the  
13    understatement or the nonpayment and taking into account all other  
14    facts and circumstances, it is inequitable to hold the other spouse  
15    liable for the deficiency in tax attributable to that understatement  
16    or nonpayment, then the other spouse shall be relieved of liability  
17    for tax (including interest, penalties, and other amounts) to the  
18    extent that the liability is attributable to that understatement or  
19    nonpayment of tax.

20    (b) For purposes of this section, the determination of the spouse  
21    to whom items of understatement or nonpayment are attributable  
22    shall be made without regard to community property laws.

23    (c) This section shall apply to all calendar months or quarters  
24    subject to the provisions of this part, but shall not apply to any  
25    calendar month or quarter that is more than five years from the  
26    final date on the board-issued determination, five years from the  
27    return due date for nonpayment on a return, or one year from the  
28    first contact with the spouse making a claim under this section; or  
29    that has been closed by res judicata, whichever is later.

30    (d) For purposes of paragraph (2) of subdivision (a), “reason to  
31    know” means whether or not a reasonably prudent person would  
32    have had reason to know of the understatement or nonpayment.

33    (e) For purposes of this section, with respect to a failure to file  
34    a return or an omission of an item from the return, “attributable to  
35    one spouse” may be determined by whether a spouse rendered  
36    substantial service as a supplier entering, removing, or selling  
37    taxable diesel fuel, an interstate user, an exempt bus operator, or  
38    a highway vehicle operator using taxable diesel fuel to which the  
39    understatement is attributable. If neither spouse rendered substantial  
40    services as a supplier, interstate user, exempt bus operator, or

1 highway vehicle operator, then the attribution of applicable items  
2 of understatement shall be treated as community property. An  
3 erroneous deduction or credit shall be attributable to the spouse  
4 who caused that deduction or credit to be entered on the return.

5 (f) Under procedures prescribed by the board, if, taking into  
6 account all the facts and circumstances, it is inequitable to hold  
7 the other spouse liable for any unpaid tax or any deficiency (or  
8 any portion of either) attributable to any item for which relief is  
9 not available under subdivision (a), the board may relieve the other  
10 spouse of that liability.

11 (g) For purposes of this section, registered domestic partners,  
12 as defined in Section 297 of the Family Code, have the same rights,  
13 protections, and benefits as provided by this section, and are subject  
14 to the same responsibilities, obligations, and duties as imposed by  
15 this section, as are granted to and imposed upon spouses.

16 (h) The relief provided by this section shall apply retroactively  
17 to liabilities arising prior to the effective date of this section.

18 SEC. 57. Section 60653 of the Revenue and Taxation Code is  
19 amended to read:

20 60653. The Controller shall make the transfers to the Highway  
21 Users Tax Account in the Transportation Tax Fund pursuant to  
22 Section 60652 at the same time as the transfers of moneys received  
23 under the Motor Vehicle Fuel Tax Law are made.

24 SEC. 58. (a) *The amendments made to Section 18533 of the*  
25 *Revenue and Taxation Code by Section 38 of this act shall apply*  
26 *to requests for relief filed on or after January 1, 2008, and before*  
27 *January 1, 2009.*

28 (b) *The amendments made to Section 18533 of the Revenue and*  
29 *Taxation Code by Section 39 of this act shall apply to requests for*  
30 *relief filed on or after January 1, 2009.*

31 ~~SEC. 58.~~

32 SEC. 59. The Legislature finds and declares that the enactment  
33 of this act and the retroactive application provided by Sections 33,  
34 35, 37, 42 to 45, inclusive, and 49 to 56, inclusive, of this act are  
35 necessary for the public purpose of providing equitable relief to  
36 innocent spouses or registered domestic partners who are liable  
37 for a tax or fee, even though the spouse or registered domestic  
38 partner did not know of, and had no reason to know of, any  
39 understatement or nonpayment of the tax fee, and by ensuring that  
40 the collection of a tax or fee liability is fair and correct.

1     ~~SEC. 59.~~

2     *SEC. 60.* Notwithstanding Section 2230 of the Revenue and  
3     Taxation Code, no appropriation is made by this act and the state  
4     shall not reimburse any local agency for any sales and use tax  
5     revenues lost by it under this act.

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